




**City Auditor**

Date: November 14, 2007

To: Audit and Finance Committee

cc: Christopher Brady, City Manager  
Debbi Dollar, Assistant City Manager  
Kari Kent, Deputy City Manager  
Johann Zietsman, MAC Executive Director

From: Gary Ray, City Auditor 

Subject: Audit of Mesa Arts Center Event Settlements – Final Report

Transmitted with this letter are the Final Report and Corrective Action Plans for our audit of the Mesa Arts Center (MAC) Event Settlement process. Attached to the report is a detailed response prepared by the MAC. We wish to thank the staff of the MAC for their cooperation and assistance throughout the audit. If you have any questions, please call me at x3210, or Jennifer Ruttman at x3767.

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# Audit Report

**Department:** Arts & Cultural  
**Audit Subject:** Mesa Arts Center – Event Settlements  
**Audit Period:** January 1, 2007 through April 30, 2007  
**Report Date:** September 25, 2007

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**Title:** **Audit of Event Settlements**

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**Objectives:** This audit was conducted to determine whether the Mesa Arts Center (MAC) has implemented procedures and controls that are adequate to provide reasonable assurance that:

- Event settlements are accurate, complete and consistent with applicable contract terms.
- The City's assets and interests in connection with event settlements are protected from losses associated with errors, fraud or other abuses.

**Scope:** We reviewed relevant documents, interviewed key personnel, performed detailed tests on selected event settlements from the audit period, and conducted other tests and inquiries as necessary to accomplish our objectives.

**Background:** Event Settlements

Performing Arts event settlements are prepared at the conclusion of each event to account for event revenues and expenses and, if applicable, to determine the amount of excess revenues to be distributed in accordance with a contract between the City and a rental client or co-promoter. The procedures for settlement differ depending on the type of event and the type of presenter.

When a Performing Live event is promoted/presented solely by Mesa, the City is responsible for all ticket pricing and sales; we pay all expenses; and we retain any resulting profits. The settlement for this type of event is generally prepared for internal use only. However, it may also be provided to the artist or agent and, if applicable, used to determine any additional revenue split required by the contract.

When the City enters into an agreement with an outside promoter to jointly promote an event, revenues and expenses are shared in accordance with the terms of the individual co-promotion contract. A co-promoted event settlement generally accounts for all event revenues, but only those "allowable expenses" specifically identified in the co-promotion contract are included. All allowable expenses, whether incurred by the City or by the co-promoter, are deducted from gross ticket sales to determine the amount of net revenue to be shared.

When an affiliate organization or visiting company rents a MAC venue for its own production, the MAC charges a fixed rental rate. Additional fees apply for services or equipment beyond the basics covered by the rental rate. Fees and charges are deducted from ticket revenue, and any remaining revenue belongs to the rental client.

#### Fees & Charges

The fees charged by the MAC are approved by the City Council as part of the City of Mesa Schedule of Fees and Charges. However, the Arts & Cultural section of that document includes a clause, which states: *“Mesa Arts Center Administrator is authorized to grant discounts or refunds, waive fees or negotiate special pricing (weekend rates, co-promotes, etc.) as required, if at the Administrator’s discretion it is in the best interests of the City.”* There are no additional criteria, limits or conditions imposed on this delegation of authority.

#### **Conclusion:**

In our opinion, the Mesa Arts Center did not have adequate controls in place during the audit period to ensure that event settlements were properly managed. The most significant control weaknesses included a lack of adequate documentation to support settlements and a lack of management oversight. Specifically:

- There were no effective compensating controls in place to mitigate the risks associated with the Administrator having full discretionary authority to levy/adjust/waive fees and to negotiate revenue splits and other contract terms.
- There was no follow-up review process in place to ensure that all applicable expenses and fees were included on settlements or to verify the accuracy of calculations.
- Contract changes were undocumented, multiple/conflicting contracts existed for the same event, and event settlements did not reflect applicable contract terms.
- Credit card fees were undercharged on settlements.

Our recommendations are summarized below. For detailed explanations of all audit findings and recommendations, please see the attached Corrective Action Plans (CAPs).

#### **Summary of**

#### **Recommendations:** Settlement Process:

1. Event settlements should be independently reviewed to verify that all data is accurate and complete, to ensure that any errors or omissions are discovered and corrected, and to verify compliance with all applicable contract terms. No settlement should be deemed “final” until it has been reviewed and verified.

2. Co-promoters should be required to submit documentary evidence of all expenses included in the event settlement.
3. All expenses and fees allowable under valid contracts/agreements, including marketing expenses, should be included on event settlements.

Contract Management:

4. All contracts and agreements related to an event should be consistent with each other and should accurately represent the terms negotiated by the parties. Any changes to contract terms should be in writing and initialed or signed by both parties.
5. The existing standard License Agreement should not be used for co-promoted and other non-rental events. A separate standard contract should be developed for use with these events.
6. The MAC Director should review all co-promoted event contracts and settlements, and should periodically review other contracts and settlements. This is a necessary compensating control to mitigate the risks associated with the high level of autonomy and discretionary authority afforded the Performing Arts Administrator.

Waiving of Fees:

7. Controls should be implemented to ensure that fees are only waived when it is in the best interest of the City.
8. To ensure accountability, waived fees should be included on the settlement sheet and noted as having been waived.
9. The Director should periodically review waived fees to ensure that the reasons, frequency and amounts are consistent with the intent of the authority granted by the Council.

Credit Card Fees:

10. The MAC should charge credit card fees based on the full dollar amount of credit card transactions, using the rate specified in published fee schedules and signed agreements.

## Corrective Action Plans

### Corrective Action Plan #1: Lack of Adequate Internal Controls

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- Observations:**
- There were no controls in place to ensure the accuracy and completeness of data and documentation related to event settlements.
1. Final settlements for some events were prepared using preliminary or estimated numbers; and no follow-up review was done to verify that these settlements were accurate and complete.
  2. An undocumented special pricing agreement with a vendor resulted in an overpayment that was not identified by MAC staff.
  3. Expenses claimed on settlements were not adequately documented and/or conflicted with supporting documentation.

- Discussion:**
1. Under Addendum A, Sec. IX of the MAC's standard License Agreement, "... *preliminary settlement shall be made at satisfactory conclusion of the event. ... Final settlement will be made within seven (7) days following the event.*" Revenue reports were sometimes run for settlement purposes before the event ended. Since sales, refunds or adjustments may be processed after these reports are run, the settlements may be inaccurate, resulting in under or overpayment to performers, co-promoters, rental clients or others.
  2. The Performing Arts Administrator had an informal agreement with a vendor to 'rent' some technical equipment at no charge, except for labor and delivery charges. The vendor agreed to this because the MAC was considering purchasing the equipment. The vendor was asked to provide an invoice for the full regular rental price, for settlement purposes. The Administrator stated that he never intended for the full invoice amount to be paid. However, since there was no documentation of the no-charge agreement, and the staff members responsible for the payment were not informed, the full invoice, including the \$2,370 rental fee plus \$750 in labor and delivery charges, was paid. Furthermore, only \$550 was claimed on the settlement.

Following the discovery of these facts by audit staff, a MAC staff member contacted the vendor, who issued a \$2,370 credit on a subsequent invoice. In addition, the MAC now has all payments of invoices related to Performing Live events routed through the Administrator, to ensure they are not paid without his knowledge.

3. The memorandum of agreement for one of the co-promoted events tested states: "*The attached budget is for reference only; payment*

*shall be on actual documented expenses.”* However, the majority of expenses on the event settlement were either undocumented or in conflict with supporting documents. For example, the co-promoter’s costs for marketing, insurance, buyout and liquor were undocumented; and the artist fee was \$1,000 higher than the contract price.

4. The co-promoter prepared an invoice on which he listed the extra \$1,000 as an “Administration Fee,” an item that was not included in the contract or estimated expenses budget. The invoice also includes a \$1,083 charge, identified only as “Misc”, which is actually the co-promoter’s share of net revenue.

**Risks:**

1. Inaccurate data used to prepare settlements may result in under or overpayment to co-promoters, performers, rental clients or others.
2. Undocumented special arrangements made with vendors and inaccurate or incomplete settlement documents may lead to accusations of improprieties. Even if unfounded, such accusations may negatively impact the public’s trust.

**Recommendations:**

1. The MAC should not prepare an event settlement prior to the end of the event, except when contractually obligated to do so.
2. The first settlement prepared for an event should always be considered “preliminary.” The settlement should be deemed “final” only after it has been independently reviewed (as recommended in #6, below). This is particularly important for co-promoted events, as actual expenses may still be unknown on the event date and may vary significantly from estimates.
3. Special agreements with vendors regarding pricing or other terms should be clearly documented and communicated to those responsible for payment.
4. A vendor should never be asked to produce a false invoice for settlement purposes. Only actual expenses paid should be claimed on a settlement.
5. For all co-promoted event settlements:
  - a. Co-promoters should be required to submit adequate documentary evidence of all expenses claimed. Copies of these documents should be retained in event settlement files.
  - b. The MAC should claim all expenses allowable by the contract.
  - c. The final settlement sheet should be the controlling instrument for purposes of determining and substantiating any final payment

due to a co-promoter. (There is no need for an invoice from the co-promoter, especially for their share of MAC revenues.)

6. The MAC should implement a process that requires an independent\* review of every settlement, with the following objectives:
  - a. To detect any errors or omissions and see that they are corrected.
  - b. To ensure consistency between the settlement and all applicable contract terms.
  - c. To verify that co-promoter expenses, if applicable, are adequately documented.

\* For this purpose, “independent” means the review is performed by someone who meets all of the following criteria:

- Not involved in the preparation of the settlement, AND
- Not organizationally subordinate to the preparer of the settlement, AND
- Accountable for the review (i.e. required to sign off on the final settlement)

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### **Corrective Action Plan #2: Contract Management Needs Improvement**

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**Observation:** During the audit period, there was an overall lack of contract oversight and monitoring at the MAC, evidenced by multiple/conflicting contracts for the same events, undocumented contract changes, and event settlements that did not reflect applicable contract terms.

**Discussion:** We found that a single MAC event file may include multiple contracts, in the form of standard license agreements (LA), addenda, memoranda of agreement, and/or other contracts, some or all of which may contain conflicting language. In addition, final event settlements were often inconsistent with the terms of the original contract(s), with no documentation on file to explain the differences. For example, the contract for one co-promoted event included a \$2,747 license fee, which was not claimed on the event settlement.

A major cause of these differences was that contract terms were re-negotiated with co-promoters, often on the date of the event during the settlement process, without amending the contract in writing. Even if both parties were to sign the settlement sheet, which would constructively amend the agreement, there would be no assurance that both parties acknowledged and accepted all changes, rather than having overlooked an error or other unauthorized change. For example, on one settlement the co-promoter charged an extra \$1,000, which went unnoticed by the MAC.

Merchandise sales revenue splits were often inconsistent with the terms of the original contract(s). MAC staff said this was primarily due to the involvement of third-party sellers, who contract with the artist

independently from the artist's contract with the MAC. In contrast, Mesa Amphitheater staff report that they enforce the terms for merchandise sales as stated in the contract and they do not re-negotiate on the date of the event. They have avoided this issue by ensuring that their contracts accurately reflect the terms as agreed to by the parties.

Payments to artists/agents/promoters were made in a manner inconsistent with the terms of the contract. Specific payment instructions are often included in event contracts, yet checks were made out to a different name, sent to a different address, hand delivered, or handled in other ways contrary to the written instructions. The City's Accounts Payable Division (A/P) has attempted to stop this by refusing to honor requests for payments that do not match the contract terms. However, the MAC, not A/P, has primary responsibility for complying with these contracts.

**Risks:**

1. Non-compliance with contracts may create legal liabilities, resulting in financial losses.
2. Unwritten contract changes and inadequate concern for accuracy may create the appearance that fraud or other improprieties may have occurred. Even if only in appearance, these perceptions can damage the reputations of the MAC and the City of Mesa and negatively impact the public's trust.
3. Co-promotions carry a higher risk of fraudulent activity, because of the presence of a third party sharing in both revenues and expenses; and also because each agreement is independently negotiated by one individual with no expectation of management review.

**Recommendations:**

1. The MAC should ensure that contracts, agreements, settlements and other such documents are consistent with all terms negotiated between the parties and that all documents connected to the same event are consistent with each other. No contract, settlement or other document should be signed with the knowledge that any of its content is inaccurate or invalid.
2. The MAC should discontinue the use of the existing standard License Agreement for co-promoted and other non-rental events. A separate standard contract should be developed for use with non-rental events. It should include only the basic language required to form the agreement and to protect the City from legal liability (as determined by the City Attorney's Office). The basic agreement should incorporate, by reference, a separate addendum containing the specific terms of the individual agreement, and care should be taken to avoid redundancies and/or conflicts with the primary contract. Any contract terms that are to be negotiated on or after the date of the event, should be characterized as such in the addendum.



3. The MAC should ensure that all changes to contract terms are in writing and that each individual change is initialed or signed by both parties. This will provide evidence that any deviations from the original agreement that are found on the settlement are not due to errors, irregularities or fraud, but are the result of changes that were acknowledged and accepted by both parties.
4. The MAC Director should review all co-promoted event contracts and settlements, and should periodically review other contracts and settlements. Management review at the Director level is a necessary compensating control, to mitigate the risks associated with the high level of autonomy and discretionary authority afforded the Performing Arts Administrator. To be effective as a control, this management review should meet the following objectives (at a minimum):
  - a. Ensure that the Director is aware of and supports the specific contract terms negotiated and executed by the Administrator.
  - b. Ensure that the settlement was reviewed for accuracy, completeness, documentation and compliance with contract terms (as recommended in CAP #1).
  - c. Ensure that fees are waived only when doing so is in the best interest of the City (as recommended in CAP #3).

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### **Corrective Action Plan #3: Lack of Controls Over the Waiving of Fees**

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**Observation:** The MAC Performing Arts Administrator has discretionary authority to levy, adjust and/or waive fees related to performing arts programs, and has empowered the Event Services Supervisor to exercise this same authority with regard to rental event clients. However, there are no compensating controls in place to mitigate the associated risks and ensure that fees are only waived in the best interest of the City.

**Discussion:** The Council-approved Schedule of Fees and Charges states that the ***“Performing Arts Center Administrator is authorized to grant discounts or refunds, to waive fees or to negotiate special pricing (weekend rates, co-promotes, etc.) as required, if at the Administrator’s discretion it is in the best interests of the City.”***

During the audit period, significant fees were waived to assist rental clients and co-promoters when ticket sales were insufficient to cover their costs. In addition, charges for staff time and in-house equipment use were more likely than other fees or charges to be waived because they were not viewed as “out of pocket” costs, which must be recovered from the client.

According to the fee schedules and policies published by the MAC, the fees charged to clients and co-promoters were established to help defray the costs associated with operating the facility for their events. These costs include payroll for staff members providing various event services; as well as the costs associated with the purchase and maintenance of any in-house equipment that may be used for the event. The City incurs these costs regardless of the client's profit or loss from the event. A client should not be exempted from certain fees solely because their event is not profitable, while other more successful clients pay the fees.

Standard rental rates charged by the MAC were set at levels that were deemed to be competitive with other venues. They serve to recover only a portion of the most basic operating costs associated with the respective event. For this reason, the MAC developed and published detailed schedules of additional fees for services and equipment beyond the basics. Collection of all applicable fees is critical to the achievement of direct cost recovery, which was mandated by the City Council for these programs.

Whether or not the Administrator and his staff have used their discretion in waiving fees appropriately and in the best interest of the City is for management and the City Council to determine. However, to make that determination it is necessary to know the facts of when, why and how much is waived; yet that data is not tracked, reported or reviewed.

**Risks:**

1. Waiving fees for the reasons described above may lead to the perception that some clients receive unequal treatment, and may set an undesirable precedent for future events.
2. Excessive waiving of fees may impact the MAC's ability to recover direct costs as mandated by the City Council for Performing Live programs.

**Recommendations:**

When it is not possible or practical to implement preventive controls, such as segregation of duties, it is essential to implement detective controls, such as data analysis and management oversight. The MAC should implement the detective compensating controls to mitigate risks and ensure that fees are only waived when it is in the best interest of the City. Specifically:

1. All applicable fees should be recorded at settlement, and only recorded fees should be subject to waiving.
2. The MAC Director should perform periodic reviews of waived fees, to verify that the reasons, frequency and amounts are consistent with the intent of the authority granted by the Council.

3. Specific criteria should be established and used to determine whether or not a fee should be waived. The criteria should be designed to ensure that fees are waived only when:
  - a. There is a valid customer service-related reason – such as poor service delivery or some other fault on the part of the MAC; or
  - b. A reasonable argument can be made that, under the specific circumstances at hand, there are benefits that exceed the costs.

#### **Corrective Action Plan #4: Credit Card Fees Were Not Calculated Correctly**

**Observation:** Credit card fees were charged based on net ticket sales instead of total credit card transactions, and were not always charged at the rate specified in the event contract.

**Discussion:** The Mesa Arts Center 2006-2007 Theater Rental Client Additional Use Fees state: ***“Credit card fees will be charged back at settlement to licensee at 4.0% of total credit card transactions processed by the Mesa Arts Center box office.”*** The co-promotion agreements we reviewed also specified a rate of 4% for credit card fees. The rate for MAC affiliates is 2.8%.

The credit card transaction fees charged on rental and co-promoted event settlements were intended to recover the City’s costs to process those transactions. The City pays credit card fees based on the full dollar amount of each credit card transaction. Therefore, the fees charged on event settlements should be based on the full transaction amount, and should be charged at the rate specified in published fee schedules and signed agreements.

Credit card fees were applicable on 5 of the 7 event settlements tested. If the total dollar amount of credit card transactions had been used to calculate the fees, the total charges would have been \$7,271.16, instead of \$5,561.52, a difference of \$1,709.64.

**Risk:** If credit card fees charged by the MAC are not calculated using the correct rate and are not applied to total credit card transactions, they may not be sufficient to recover the City’s cost to process the respective transactions.

**Recommendation:** The MAC should charge credit card fees based on the full dollar amount of credit card transactions, using the rate specified in published fee schedules and signed agreements.

### **Corrective Action Plan #5: Errors in Spreadsheets Used to Prepare Offers**

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**Observation:** Offers for potential events were prepared using a spreadsheet that was not consistent and contained formula errors, resulting in inaccurate information being presented.

**Discussion:** The offer/settlement worksheet was prepared on a spreadsheet and was modified for every event. This included changing or overriding formulas, changing estimated expenses, omitting certain data, etc. These modifications resulted in errors. For example, after inaccurate potential revenue figures were presented in a formal offer to an artist, the MAC had to increase the amount paid to the artist to compensate for the error.

During the audit period, the MAC was working with the Information Technology Department to develop an Access database, which is intended to provide a better tool for use in managing offers and settlements. The effectiveness of this new database will depend on several factors, such as security features, user training, compatibility with business processes, etc.

**Risks:**

1. Inaccurate offer documents may lead to financial losses or other liabilities.
2. Substantial modification of the offer worksheet for every event increases the likelihood of errors.

**Recommendations:**

1. The MAC should ensure that official offers are consistent and accurate.
2. The MAC should continue to develop the database noted above, and should use it to produce offer documents that are reliable and standardized. The following features should be included:
  - a. Once an offer is finalized, no changes should be allowed.
  - b. Estimated expenses quoted on the final offer should automatically carry through to the settlement sheet.
  - c. All calculations should be automated and locked down, so that users cannot change them.
  - d. Data entry should be form-based, with required fields and validations to minimize the risk of errors.
  - e. The maximum number of seats available in each theater should be fixed and not editable by users. Changes to those numbers, due to unique theater configurations or for other reasons, should require separate adjustments that can be readily identified.



*Received 11/1/2007  
@ City Auditor's Office  
JR*

**TO:** GARY RAY, CITY AUDITOR

**THROUGH:** CHRISTOPHER J. BRADY, CITY MANAGER *CB*  
DEBRA DOLLAR, ASSISTANT CITY MANAGER *DD*  
KARI KENT, DEPUTY CITY MANAGER *KK*

**FROM:** JOHANN ZIETSMAN, MESA ARTS CENTER  
EXECUTIVE DIRECTOR

**RE:** MESA ARTS CENTER (MAC) EVENT SETTLEMENTS  
SEPTEMBER 25, 2007 DRAFT AUDIT RESPONSE

**DATE:** OCTOBER 25, 2007

Attached hereto is a detailed response to the recommendations, which we trust will clearly signal our commitment to address the various issues in the most appropriate and prompt manner. In addition to the attached detailed response, I wish to articulate the following general comments:

- 1 We appreciate the Auditor's thorough attention to this matter, and the helpful recommendations to address the identified areas of potential risk. The Auditor's objective view of these issues is very helpful in developing systems to monitor, review and control aspects related to Event Settlements.
- 2 We concur with almost all of the Auditor's recommendations, and staff has already put many of the recommendations into action. For the rest, we will do so as promptly as possible.
- 3 We offer slight variations to some recommendations based on:
  - a. Practicality: some recommendations would be impractical to implement exactly as per the Auditor due to either staffing or other resource limitations, however we believe our alternatives address the spirit of the recommendations;
  - b. Industry standards: the Performing Arts industry (as any other) has developed some longstanding national industry standards which do not correspond exactly with some of the Auditor's recommendations, however we are confident that our compliance to these standards will not lead to any risks to the City of Mesa;
  - c. Roles and responsibilities: the Performing Arts Administrator (PAA) is specifically appointed for his experience and knowledge of this industry, and he is expected and empowered to make decisions regarding contracts and settlements based on his expertise. The role of the Executive Director is to monitor the performance of the PAA, and to hold him



accountable for meeting certain minimum standards of performance, including contract management and settlements. Following the Auditor's recommendations, we believe we now have adequate independent review and verification of contracts and settlements in place. This includes three specific members of staff who will review and verify settlements (in addition to doing random reviews of the full event files), as well as the Executive Director who will review settlements over \$50 000, and approve all wire transfers.

- 4 Being a new facility, many operating systems are still being developed, and the Auditor's assistance with this has been invaluable. We acknowledge specific errors identified, and we have either ceased certain practices, or amended procedures to avoid future errors. However, many risks identified by the Auditor point to one incident (Nickel Creek), where a series of unfortunate (but relatively harmless) events flowed from the PAA's attempt to serve the City's best interest. We have rectified this specific error immediately, and it has not been repeated since – neither will it be repeated in future, since the operating systems have been improved.
- 5 Related to the facility's short history, many computer-based support systems are still being developed, and some of the risks were simply due to the "manual" alternative systems management had to resort to in the absence of appropriate resources typically found in similar institutions. Since the audit, MAC has continued to improve its in-house systems (not completed 100% yet), and the various City departments have learned how to support this institution.
- 6 We understand the concern expressed by the Auditor regarding the potential risks involved when amending fees or other details of an agreement with a renter, co-presentation partner or artist. We have attempted to address every issue as identified, and I am confident we will remain true to the primary requirement to serve the City's best interests when exercising discretion in such negotiations. The Executive Director is involved in discussions regarding such exceptions in order to develop acceptable procedures guiding these decisions in future.

Sincerely,

JOHANN F ZIETSMAN  
EXECUTIVE DIRECTOR  
MESA ARTS CENTER

## **Corrective Action Plan #1: Lack Of Adequate Controls**

### **Discussion:**

1. Final settlements completed with preliminary numbers

#### **Response:**

As a practice, MAC staff only settles shows on the "night of show" when it is a required business need. Examples of this are when the artist fee is based on the expenses, a promoter requires funds be wired the following day, payment must be received night of show, or staff has concerns that ticket sales are not sufficient to meet venue expenses. It is industry standard that these settlements are completed using estimated and preliminary numbers. It is also a standard practice to estimate expenses with a worst-case scenario in mind.

2. Performing Arts Administrator Informal Agreement

#### **Response:**

This incident stemmed from the Nickel Creek performance in April. When the show was contracted, the MAC expected to procure the Vdocs line Array. Because we were working with both Vdocs and Meyer to determine which product would be specified, we were provided a free usage of both systems for different events. MAC was to only pay the vendor for the installation of the system (\$550). The Nickel Creek show was based on percentage, and it was a requirement to show all costs to the artist. The vendor provided us with an invoice for the settlement with the artist of \$3,000 plus dollars – this is what the artist expected to pay for a rented system. For settlement purposes with our Co-Presenter, our charge back (based on actual costs) was \$550. Unfortunately, the incorrect invoice was presented to the MAC Operations Supervisor, who processed it. The MAC Performing Arts Administrator (PAA) did not approve expenditures on the system at that time as they related to Performing Live programs. At the time of the audit, we had not yet seen our budget reports yet, which would have exposed this error. The system has since been changed and the MAC PAA approves all expenditures prior to payment, ensuring this error would not occur again.

- 3 & 4. Memorandum of Agreement and Administration Fee

#### **Response:**

The incident stemmed from the Nickel Creek performance in April. We acknowledge mistakes made during the settlement of this show, and have taken action to avoid repeats of these errors in future. It is clear from other events that this event was an isolated incident.

### **Recommendations:**

1. MAC staff concurs with the recommendation of the auditor.

2. MAC staff concurs that settlements may be subject to adjustment after the *night of show settlement* has been completed, and are therefore "preliminary."
3. MAC staff concurs with the recommendation of the auditor.
4. MAC staff concurs with the recommendation of the auditor, and this isolated incident will not be repeated – refer to Discussion #2 above.
5. Co-promoted event settlement:
  - a. Unless otherwise specified in the agreement, MAC staff concurs with the recommendation of the auditor.
  - b. MAC staff concurs with the recommendation of the auditor.
  - c. We should use the language "*mutually agreed upon expenses at settlement*" per the advice of the City Attorney's Office. Many times 3<sup>rd</sup> party invoices are not available at the time of settlement or may be agreed upon fixed expenses. Invoices from our *partner* are acceptable. If they accept our invoices, we should accept theirs. Additionally, the City Attorney and MAC staff have discussed adding language to the bottom of all settlements that state that "this settlement shall act as an amendment to the original contract."
6. MAC staff concurs with the auditor recommendations a-c, with the following modification: Prior to payment of the settlement (excluding night of show payments) the Administrative Support Assistant I for Performing Live will be the primary reviewer. If this staff person is not available, either the Administrative Services Specialist or the Accounting Specialist II who report to the Executive Director will review. These staff members will also randomly review settlements and the full content of the event files. The MAC Executive Director will review the settlement for any event budget exceeding \$50,000. Additionally, all wire transfers are and will continue to be signed off by the MAC Executive Director.

## **Corrective Action Plan #2: Contract Management Needs Improvement**

### **Discussion:**

This issue has been a concern of MAC management for a period of time. When the MAC opened, staff had numerous projects and contracts to work through with the City Attorney's Office. Co-presentation agreements specifically were never officially developed. Staff is using the standard license agreement with a cover letter to act as the Co-Pro agreement. Staff is actively working on this project with the City Attorney's Office and hopes to have it completed within the next two months.

MAC staff is unsure which co-presentation specifically the auditor is referring to in the Discussion Section of this Corrective Action Plan, but our Co-Pro cover letter specifically states that the license fee (\$2,747.00) is to be covered by the



MAC. This fee has been included in case the artist requires proof of venue rental.

Both the venue manager and the promoter are very aware of expenses. When the settlement is signed, all relevant parties are acknowledging and authorizing that these numbers are acceptable. That does not exclude the possibility that an error may have been made, but depending on the circumstance and the dollar amount, both parties would address the remedy. In most cases the relationship with our partner, although show-by-show, is a long-term relationship.

Mesa Arts Center staff recognizes that in the past we have authorized changes in merchandise percentages on the day of event. This practice has ceased. Any merchandise percentage modifications are now made prior to the day of the event, and are recorded in writing.

Regarding payment to artists, it is our standard practice that we follow the artist agreement, however unless otherwise stated specifically in the contract, it is industry standard to pay an artist on the night of the show. MAC staff is aware that we need to clearly indicate on our artist agreements that reimbursements and artist payments are due on the night of the show.

**Recommendations:**

1. MAC staff concurs with the recommendation of the auditor.
2. MAC staff concurs with the recommendation of the auditor. We have been working with the City Attorney's Office to address this issue. We strongly agree that we want to eliminate redundancies in the contractual process.
3. MAC staff concurs with the recommendation of the auditor with the addition that changes or amendments to the contract (offered and accepted) electronically are acceptable.
4. The MAC Performing Arts Administrator (PAA) is specifically appointed and empowered to make decisions regarding artist and Co-Pro negotiations. The MAC Executive Director has regular discussions with the PAA to act as a "monitor and advisor" regarding negotiations, and will formally review event settlements in excess of \$50,000.

**Corrective Action Plan #3: Lack of Controls Over The Waiving Of Fees**

**Discussion:**

MAC staff takes the City Council approved Schedule of Fees and Charges very seriously. Any waivers of fees, or negotiated deals have been made in accordance with the policy, with the best interest of the City in mind. The flexibility of this policy has made this venue competitive and successful in securing some of our highest profile and profitable events.

As part of our partnerships, the Mesa Arts Center provides its in-house services, equipment and staff as part of the deal. This is our investment in the project, otherwise our partners would not have any incentive to partner with us. Co-promotions are a major shot in the arm to our programming process. The ability to be flexible and creative is a requirement. These shows reduce the city exposure, bring us events that would not come to us, provide us with the opportunity to generate higher revenue than a straight rental, secure shows that would otherwise go to other venues, and develop collaborative relationships with both commercial and non commercial promoters in a highly competitive market. Additionally, they have helped establish the MAC as a player in the community, filling dates and attracting people to Mesa.

For rental clients, flexibility within reason is all part of the negotiation process to attract events. We take care not to create precedents, and offer "special" considerations only if the circumstances are clearly exceptional, and in the interests of the City.

Staff utilizes *FastBook* as a facility management system. It had always been our intent to use this system to highlight fees charged or waived in order to ensure detection and control of inconsistencies. Upgrades, system bugs and staff changes have kept us from fully implementing this system.

**Recommendations:**

1. MAC staff concurs with the recommendation of the auditor and will make our best effort to do so.
2. MAC staff concurs with the recommendation of the auditor.
3. MAC staff concurs with the recommendations of the auditor, and will develop criteria to guide these decisions.

**Corrective Action Plan #4: Credit Card Fees Were Not Calculated Correctly**

**Discussion:**

Staff has consistently charged back 2.8% on credit cards to Affiliates, Theater League and Co-presentations since the opening of the MAC. MAC staff receives monthly reports from the Finance Department that indicate what our credit card charges are, and to date staff has recouped a higher percentage than our actual percentage cost. This has all been done in accordance with our Council approved Schedule of Fees policy (as stated above in CAP #3).

The last upgrade from *AudienceView* changed the report format, and it now includes additional columns specifically for sales tax. Prior to this, we have been basing our reimbursement on net ticket sales. Staff found this error about the same time the Auditor did, and we have fixed this issue.

**Recommendations:**

MAC staff concurs with the recommendations of the auditor that we should include both sales tax and net ticket sales as a fully recoverable expense. Since the opening of the new MAC, staff has consistently offered a reduced credit card rate to Affiliates and Co-sponsorships. This has been consistent with the desire to ensure the success of our primary user groups. Per the City Council approved Schedule of Fees and Charges, the reduced credit card fee has been made in accordance with the policy and the best interest of the City in mind. MAC will continue to monitor the actual percentage expense to ensure that the MAC recoups the actual cost at 100%.

**Corrective Action Plan #5: Errors In Spreadsheet Used To Prepare Offers****Discussion:**

Management determined last season that we need to develop an Access database program to better monitor, control, and settle events. This system is in the process of being implemented. We are developing a program to plan, program, budget, settle, and evaluate performances at the MAC. In the absence of such a resource, the MAC PAA developed an Excel spreadsheet, which has been invaluable, but it was never intended as a permanent solution, since manual errors are easily made.

**Recommendations:**

1. MAC staff concurs with the recommendations of the auditor and will make our best effort to do so.
2.
  - a. Due to the nature of the industry, MAC staff is unable to comply with this request. The arts/entertainment industry is all about flexibility and creativity. Often artists do not know their specific needs until much closer to the event. The Technical Rider provided to estimate expenses during the initial steps of booking a show may become outdated and revised as we get closer to the actual event. As staff develops our *offer database*, we will look to include budget updates so that we can compare the first deal with any major changes and ensure they are documented. In many cases the actual event costs may be less than the preliminary expenses.
  - b. MAC staff concurs with the recommendation of the auditor and will make our best effort to do so.
  - c. In general, MAC staff concurs with the recommendation of the auditor with the following exception: there are expenses that need to be flexible and modified based on the individual deals. An example of this would be Music Rights. There is a rate difference depending on who pays them. Live Nation pays less for Music Rights than the City of Mesa agreements. Therefore we have to

adjust formulas to match that chargeback. If the system formula is locked down, we would not be able to complete the settlement.

- d. MAC staff concurs with the recommendation of the auditor and will make best effort to do so.
- e. MAC staff concurs with the recommendation of the auditor and will make best effort to do so.

10.25.07